



## **January 18, 2016, Compliance Update**

We hope everyone had a safe and happy holiday season. Speaking of seasons, we are entering the political election season and both parties are gearing up for the primary elections. We anticipate a lot of talk from both parties but probably very little legislative action until after the election. We realize you get a lot of emails and notices. Therefore, we are cutting back to one newsletter a month. We will, however, send out flash updates periodically to advise you of important developments that occur between newsletters.

### **IRS Form 1094 and 1095 Deadlines Extended**

The big news is that the deadlines for preparing, distributing and filing IRS Forms 1094 and 1095 have been extended.

<http://bit.ly/1ZACcUO>

<http://bit.ly/1Q2YJ4E>

As previously mentioned, the government will be hesitant to assess penalties for noncompliance provided you make a “good faith” attempt to comply with the rules. The government has also said that not filing anything is not a good faith attempt. So you could be subject to substantial penalties if you do nothing.

### **IRS Issues Q and A for Individuals re: Form 1095**

The previous article talks about the extended deadline employers and carriers have to distribute IRS Form 1095 to the employees. This raised questions about how the new deadline will impact the employees when they file their personal tax returns (i.e. Form 1040s). The IRS released guidance on this topic.

<http://1.usa.gov/1TwOyG9>

The IRS says taxpayers are not supposed to attach IRS Form 1095 to their personal tax return (i.e. Form 1040s) but if the taxpayer got coverage under the health care exchange or marketplace, they should wait until they receive IRS Form 1095-A. However, taxpayers need not wait until they receive IRS Form 1095-B or IRS Form 1095-C.

### **Cash Out Plans – Beware**

IRS takes aim at cash out plans and their impact on the affordability aspect of health care reform. Employers have been adopting programs where the employer pays money to employees that waive coverage under the employer's group health plan. The IRS has taken the position these arrangements impact the amount employees pay for the employer's group health plan. Say the employee's monthly cost of single coverage under the employer's group health plan is \$100 per month but the employer will pay the employee \$75 per month to waive coverage. The IRS is saying an employee electing single coverage under the employer's group health plan is really \$175 per month (i.e. the \$100 the employee is paying plus the \$75 the employee is giving up).

<http://bit.ly/1P4su84>

This could have a dramatic impact on the employer under the employer mandate or play or pay rules. The IRS says if the cash out is unrestricted, then the amount has to be included in the affordability calculation. On the other hand, if the employee has to provide other proof of health coverage (i.e. the employee is covered under his or her spouse's group health plan) then the cash out need not be included in the affordability calculation. There is transitional relief depending on when the cash out plan was established. You need to read this article if you do sponsor a cash out plan.

### **Final Regs Issued on ACA**

Health care reform was enacted in 2010 and the government has issued thousands of pages of proposed regulations and other forms of guidance since then. The government has recently combined the previous rules and issued final regulations last month on a number of ACA topics.

<http://bit.ly/1ZACuuT>

The final regulations more or less simply formalize the previous guidance. However, it is worth noting that final regulations are more authoritative than proposed regulations and Questions and Answers issued by the various government agencies.

### **ACA and Impact on Health Insurance Companies**

This article, from Standard & Poor's, talks about the impact health care reform has had on insurance companies' ratings.

<http://bit.ly/1No4vg0>

The report finds that, although the products sold through the health care exchanges or marketplaces have not been profitable, the overall impact on the carriers' ratings has been minimal.

## **Last Year Recap**

There was a lot of activity last year in the employee benefits arena and this article touches on the major items.

<http://bit.ly/1legAKJ>

This article provides a bird's eye view of some important topics and is certainly worth the time to read to ensure you are at least aware of the major developments.

## **Cadillac Tax Delayed and Is Now Deductible**

The Cadillac tax was scheduled to start January 2018 and the amount was not tax deductible. However, the excise tax is very unpopular and in a "kick the can down the road philosophy" the Cadillac tax has been postponed until January 1, 2020, and the amount will be tax deductible.

<http://bit.ly/1PFVKyV>

<http://bit.ly/1Nbvyaz>

This delay will give the new President and Congress time to revisit the topic. However, be careful what you ask for. If the Cadillac tax is repealed chances are something will replace it to help pay for health care reform. For example, health plan premiums currently are tax deductible and this costs the Federal government billions in lost tax revenues. If the Cadillac tax is repealed, perhaps some or all of the health plan premiums lose their tax-favored status.

## **HRA Integration Rules**

Health reimbursement accounts or HRAs are considered health plans under health care reform. This means that HRAs would have to provide unlimited benefits **UNLESS** the HRA is integrated with a group health plan. In other words, the HRA has to be combined with another group health plan so that the combined arrangement (i.e. the HRA + the group health plan) complies with health care reform.

<http://bit.ly/1legLFX>

This article talks about the integration rules applicable to HRAs. One thing to note is that integration rules limit the individuals that can be covered under the HRA to those that are covered under the group health plan. This means, for example, if the employee elects single coverage under the employer's "main" group health plan, then the HRA cannot reimburse claims incurred by the employee's spouse and children since they are not covered under the "main" group health plan.

## **New Law Governing Transportation Benefits**

Employers can provide tax-favored transit passes and parking to employees. However, those benefits were limited and the limits were different. The new law now says the limits are identical for both benefits.

<http://bit.ly/1mcKOyA>

<http://bit.ly/1J6VUQB>

The new rules are retroactively applied for all of 2015. The new rules will make a little easier for employers that sponsor these types of benefits.

### **IRS Releases Variety of Rules**

Right before the end of last year the IRS issued a relatively long notice addressing a variety of topics.

<http://bit.ly/1Ozt0oz>

<http://bit.ly/1Qb3rix>

<http://bit.ly/1Qb3ueg>

One of the “fixes” is that the percentage of the employee’s income to consider when determining if the cost of health coverage is affordable for purposes of the employer mandate is now indexed. So, for 2016, the employer can charge up to 9.66% (as opposed to 9.5%) of the employee’s income for the cost of single coverage under the affordability safe harbors.

### **Employer Mandate or Play or Pay Indexed Penalty Amounts**

The employer mandate or play or pay penalties are in full swing this year. Those amounts are indexed and this article lists the new amounts for this year.

<http://bit.ly/1Nbv1zb>

Note that the penalties are assessed on a monthly basis. That is, penalty amounts are listed in terms of the entire year but the employer could be assessed only part of the year for an employee.

### **Court Shoots Down EEOC Ruling on Wellness Programs**

The EEOC has taken the position the Americans with Disabilities Act (“ADA”) precludes employers from requiring employees take a health risk assessment prior to entering the employer’s group health plan. An employer instituted this requirement and the EEOC filed a lawsuit against the employer.

<http://bit.ly/1JODfsY>

<http://bit.ly/1RKKvJe>

A Federal District Court recently ruled in favor of the employer and said that the ADA does not prohibit an employer from requiring employees to complete a health risk assessment as part of the enrollment process as long as the data from the health risk assessments is used for establishing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks. Note that the EEOC has issued proposed rules addressing ADA and GINA issues and wellness programs.

### **Credit Monitoring Now Tax-Free Benefit**

As a general proposition, anything the employer provides employees is taxable income unless specifically excluded under the Internal Revenue Code. For example, the Internal Revenue Code specifically says health benefits are not taxable income. The IRS recently ruled that employers can provide credit monitoring and other identity protection services to employees tax-free.

<http://bit.ly/1J6W3DB>

The IRS notice says the employer can provide these services before there is an actual breach. Note, however, that these benefits cannot be provided under a cafeteria plan or POP under which the employees could pay for these services on a pre-tax basis.

### **MLR Rebates Amounted to Almost \$500 Million in 2014**

The Medical Loss Ratio provision under health care reform requires that carriers spend a certain percentage of premium dollars on health care. If the carrier misses the mark, the carrier has to rebate the excess back to the policyholders.

<http://bit.ly/1U0hN4G>

Although \$500 million sounds like a lot of money it is a relatively small percentage of the total premiums paid to the carriers.

### **Final Regulations Governing Premium Tax Subsidies**

A major component of health care reform is the premium subsidies through the health care exchanges or marketplaces for low-income households. The premium subsidies help people pay for the coverage through the health care exchanges or marketplaces.

<http://bit.ly/1SRZlr2>

Not surprisingly, the rules are extremely complicated. The IRS issued final rules on how to determine the person's income for purposes of determining if the individual is eligible for the premium subsidies.

### **Lump Sum Critical Illness Plans Gain Popularity**

A recent survey shows that a growing percentage of larger employers (i.e. those with 500+ employees) are offering critical illness plans that pay a lump sum if the employee gets cancer or some other serious illness.

<http://bit.ly/1Z6aw9Y>

The article says most programs are set up where the employees pay all of the premiums. The article talks about things to consider before offering this type of program.

### **Health Care Reform, Service Contract Act and Davis-Bacon Act**

The Service Contract Act and Davis-Bacon Act require employers to provide the employees with benefits or cash in lieu of benefits. Since health care reform requires large employers offer employees quality/affordable coverage or face a potential penalty, there was a question on how an employer could satisfy all three requirements.

<http://bit.ly/1U0hTsT>

The IRS answered this question late last year. Under the IRS ruling employers can treat the amount they offer employees as reducing the employees' cost of coverage when determining if the coverage is affordable and when seeing if the employer is subject to a penalty under the employer mandate. Employers can rely on this approach for plan years beginning before January 1, 2017.

### **New Claims Procedures for Disability Plans**

The Department of Labor recently issued proposed rules governing disability plan claims procedures.

<http://bit.ly/1I27IsE>

The proposed rules are along the lines of claims procedures applicable to group health plans and are designed to give participants better protection and more rights.